

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RYAN NIBBE,

Plaintiff,

vs.

B. LIVINGSTON, et al.,

Defendants.

Case No. 15-cv-00933-SMY-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation ("Report") (Doc. 31) of Magistrate Judge Philip M. Frazier recommending this Court grant Plaintiff's Motion for Leave to File an Amended Complaint (Doc. 18).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* "If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report and the Court has reviewed Plaintiff's Motion and case history and finds that the Report is not clearly erroneous. Accordingly, the Court **ADOPTS** the Report of Magistrate Judge Frazier (Doc. 31) and **GRANTS** Plaintiff's Motion to File an Amended Complaint. Plaintiff's claims will be as follows:

Claim 1: Officer Livingston used excessive force against Nibbe, in violation of the Eighth Amendment, when he sprayed Nibbe with pepper spray and slammed his face into a barbed wire fence after handcuffing him in September 2014;

Claim 2: Officer Livingston retaliated against Nibbe, in violation of the First Amendment, by threatening him with physical harm for filing grievances against him in September 2014;

Claim 3: An Eighth Amendment deliberate indifference to serious medical needs claim against Nurse Sarbuckle when she refused to provide Nibbe with his prescribed medication.

IT IS SO ORDERED.

DATED: July 12, 2016

s/ Staci M. Yandle
STACI M. YANDLE
DISTRICT JUDGE